



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 8037-98

27 January 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, and applicable statutes, regulations, and policies.

The Board was unable to obtain your naval record and conducted its review based on the decisional document of the Naval Discharge Review Board data 15 April 1994, and the letter dated 24 January 1996 from the Performance Evaluation Review Branch, Headquarters Marine Corps.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 24 March 1986 at the age of 21. Your record shows that on 21 October 1986 you received nonjudicial punishment (NJP) for dereliction in the performance of your duties. The punishment imposed was \$638 forfeiture of pay, restriction for 30 days, and reduction to paygrade E-2. The paygrade reduction was suspended for six months.

On 23 October 1986 you began a 157 day period of unauthorized absence (UA) that was not terminated until 26 March 1987. On 17 April 1987 you submitted a written request for an undesirable discharge for good of the service in order to avoid trial by court-martial for the foregoing period of UA. Your record shows that prior to submitting this request, you consulted with a

qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 29 May 1987 you were so discharged and assigned an RE-4 reenlistment code.

In a letter from the Commandant of the Marine Corps (CMC) of 24 January 1996, you were advised that your RE-4 reenlistment code was correctly assigned based on your overall record and meant that you were not recommended for reenlistment.

The Board, in its review of your entire record and application considered all mitigating factors, such as your youth and immaturity, good post service conduct, and your contention that you would like your discharge upgraded and your reenlistment code changed so that you may become a positive contributor to the armed forces. The Board further considered your contention that you went UA to provide aid and/or assistance to your ailing mother. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge or a change of your reenlistment code given the serious nature of your lengthy period of UA and your request for discharge to avoid trial for this offense. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request was granted and you should not be permitted to charge it now. Concerning the reenlistment code, the Board substantially concurred with the comments contained in the CMC letter to you of 24 January 1996. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director